

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

UNITED STATES COURT OF APPEALS
for the Second Circuit

76-7320

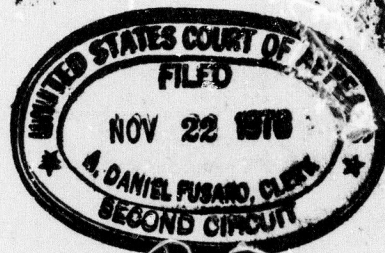
76-7320

GUNTER E. BIELEFELD,
Plaintiff-Appellant

CIV. APPEAL DOCKET No. 76-7320

v.

WALLENIUSREDERILRNA and
KARL GEUTHER & CO.,
Defendants-Appellees



On Appeal from the United States District Court for the
Southern District of New York

APPELANT'S REPLY BRIEF
IN ANSWER TO APPELLEES' BRIEF

BPI/s

by-GUNTER E. BIELEFELD, PRO-SE

UNITED STATES COURT OF APPEAL
for the Second Circuit

GUNTER E. BIELEFELD,
Plaintiff-Appellant

v.

CIV. APPEAL DOCKET No. 76-7320

WALLENUSREDERIERNA and
KARL GEUTHER & CO.,
Defendants-Appellees

APPELLANT'S REPLY BRIEF
IN ANSWER TO APPELLEES' BRIEF.

In essence Appellant's Brief on Appeal and Appendix explain appellant's position. However, because appellees in their Brief have inserted some half-truths and some falsehoods in order to confuse and misdirect attention from important issues, the appellant restates and clarifies his stand for verification by this Court.

I.) Appellant's citizenship has been put in doubt. Appellant has been a naturalized

American citizen since early 1953. He has been married to an American born wife since 1953 and has three American children, all in this Country. Throughout his professional career he has been connected with the American shipping industry. (attached exhibit #X). Appellant went to Brazil in 1953 on behalf of these two shipping companies:

American Union Transport, Inc., New York

Isbrandtsen Company, Inc., New York

and opened an office in Sao Paulo (attached exhibits # Y and Z). There he successfully developed a shipping business as steamship agent, broker and charterer. Some time after 1953 the American Consulate in Sao Paulo asked the appellant to submit proof of 6 months' residence in the United States in order to retain his U.S. citizenship. The appellant, though having been in the U.S. on various occasions for shorter periods, could not satisfy the authorities. Subsequently the Consulate advised him of his loss of citizenship whereupon he acquired the Brazilian nationality. At the next occasion when he called on the Consulate he was informed that by virtue of the Schneider (spelling uncertain) Decision/Act all citizens who had lost their citizenship due to the six month residence requirement, had automatically been reinstated. The appellant promptly obtained another U.S. passport with the Consulate's full knowledge of the appellant's interim acquisition of the Brazilian nationality.

II

II.) Defendant Wallenius for decades has been doing business in New York, Their liaison in New York since 1958 has been Motorships, Inc.

Wallenius, Geuther and Bielefeld - while their relationship lasted - had also been doing business in New York (Exhibits # H; 9; I).

III.) The General Agency in Brazil for the Wallenius ships was given to appellant Bielefeld by Geuther on behalf of Wallenius (not by CBNI) in compensation for his having successfully negotiated the CBNI franchise for the operation of Wallenius' ships in the Brazil/Europe service. CBNI's ratification came much later. (Exhibits # 2; 3; 4; 5).

IV.) CBNI was not a viable company to charter and operate ships. CBNI had no staff and no funds (Exhibits # 5; 10; 11; 30; 31-B; 31-I; Discovery/Wallenius Q&A #12 and 34; Defendant's Exhibits #K-1; K-2; K-3; K-4; K-5; K-6; K-7; K-8; Y-78a).

V.) During the period that Bielefeld was agent for the Wallenius/CBNI service Geuther had settled Bielefeld's disbursement and commission accounts regularly.

After the termination of Bielefeld's agency Bielefeld presented some remaining accounts via CBNI and others directly to Geuther. None of these were paid by or through CBNI. All were paid by Geuther (same exhibits as in paragraph IV plus Exhibit #54) over a period of 8 years, during which time Geuther at innumerable occasions tried to put the responsibility for payment on CBNI (Exhibits # 28; 29; 32; 33; 34; 47; 48; 50). The last payment was made in 1971 in the amount of \$391.21, plus interest, in final liquidation of all accounts rendered by Bielefeld (Exhibit # 54; - Defendants' Exhibit # I-8). Not at any time did Bielefeld render the "missing disbursement and commission accounts" covered by this action, for he did not have them. On the other hand, at some time Geuther had these "missing accounts" in his possession and at all times was aware of their existence inasmuch as Wallenius had paid Geuther for these "missing accounts" (Exhibit # 66). Thus with the full knowledge of the existence of these "missing accounts" Geuther demanded a waiver of all claims from Bielefeld, while Bielefeld was unaware of his rightful claim represented by the "missing accounts". Bielefeld did not know where they were when signing the waiver. (See Estoppel in Brief on Appeal).

VI. Until May 1973 Bielefeld had met with no success in his attempts to ascertain the whereabouts of his "missing accounts and vouchers" and could not establish his rights to the sums claimed in this action. Only when he received Wallenius'

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letter of May 10, 1973 (Exhibit #66) did he finally discover that the "missing accounts had reached Wallenius and that they had all been paid to Geuther. Subsequently Bielefeld tried in vain to collect his money from Wallenius and Geuther. Wallenius said they were not going to pay twice, and Geuther stood behind the 1971 waiver and the statute of limitations. Thereupon Bielefeld filed suit for fraud in this Court (Exhibits # 66; 67; 68; 69; 70; 71; 72; 73; 74; 75; 76; 77; 78; 79; 80).

VII.) No other suit has ever been filed, at any time at any place, in connection with any or all of these "missing accounts". Defendants allege otherwise, but fail to prove it. They are bluffing (Compare Bielefeld's lawsuit against Geuther- Exhibit #31 - with Bielefeld's letter of March 18, 1969 - Exhibit #45).

With the exception of the accounts covering the \$4000 cash to master, none were ever rendered by Bielefeld to either Geuther, CBNI or Wallenius or anyone else. How then did they turn up in Wallenius' books? These accounts had vanished from Bielefeld's offices before they could be recorded, and remained lost until their existence was revealed in Wallenius' letter of May 10, 1973. May the defendants ever show how they had acquired these accounts? And why were they not paid to Bielefeld?

VIII.) Bielefeld was reimbursed sometimes via CBNI for port dues and freight commissions connected with this liner service (Exhibit 23; 23-A). At other times payments for similar items were paid by Geuther directly to Bielefeld (Exhibits #26; 28; and defendants' Exhibits # F-33, G-34; H-35; I-36; J-37; J-38; K-39; L-40; M-41; N-42; O-45; P-46) or via New York (Exhibit # 1) or via freight collections. The accounting for all disbursement accounts was done by Geuther in Bremen who in due course was reimbursed by Wallenius (Exhibits # 17; 66). Freight commissions were billed sometimes to CBNI (Exhibit # 23; 23-A) and at other times to Geuther (Exhibits # 31-C; 31-D; 31-E; 31-F; 31-G; 31-H; 31-I; 32) always per Geuther's instructions. All freight commissions entered Geuther's and Wallenius' books (Exhibits #31-G; 11; 66). All freight commissions were under the direct control of Geuther (Exhibits #10; 12; 18).

IX.) On February 28, 1964, Geuther sent Bielefeld a statement of accounts (Exhibits #30), in which he arbitrarily deducted \$4000, falsely alleging that sometime in 1962 Bielefeld had failed to pay this amount to the Master of the M/V BOHEME (Exhibits #30; 31-B; 56; 57). Geuther claimed Bielefeld had failed to produce original receipts signed by the Master. The truth, however, emerged in the "discovery procedure" of this action, i.e. that Geuther had had the original receipts, signed by the Master, in his possession all along. (See confrontation of Appellant's Brief on Appeal, pages 6 and 7).

IV

Geuther had presented such original receipts to Wallenius and received payment therefor which he has withheld from Bielefeld to this day. Geuther lied to Bielefeld when he declared he had never received the original receipts and that the Master had repeatedly reported that he had not received Bielefeld's payment. (Exhibits #30; 31-B; 56; 57).

Geuther's final statement of accounts of November 10, 1964, showing a balance of \$891.21 refers only to accounts actually rendered by Bielefeld (Exhibits #31-H; 31-I). It does not include any accounts not rendered by Bielefeld (Exhibit # 45). Accounts not rendered by Bielefeld - which are the ones litigated in this action - are not covered in any of Geuther's statements. The accounts litigated in this action were not rendered by Bielefeld, because he did not have them. (Exhibits # 24; 25; 35; 36; 37; 38; 39; 40; 41; 42; 43; 44; 45; etc). They are the ones that had been subtracted from Bielefeld's offices before they had been recorded in his books. Above mentioned balance of \$891.21 - which has nothing to do with this action - shown in Geuther's statement of accounts of November 10, 1964, however, had not been paid to Bielefeld. It had been withheld on the false grounds that payment thereof was subject to approval of CBNI which approval, though, was fictitious

inasmuch as CBNI has never become a viable company (Exhibits #28; 29; 32; 33; 34). Finally when in 1971 Bielefeld engaged an attorney in Bremen in order to get paid this balance of \$891.21, Bielefeld was fraudulently induced to sign a waiver of all future claims against Geuther. (Exhibits #53; 54; 57; 58; 59 and see Estoppel/Appellant's Brief on Appeal, page 8 and 9). In presenting his demand for a waiver Geuther knew that the \$4000 receipts were in his possession, but denied such possession (Exhibit #30; 56). Bielefeld was unaware of the whereabouts of these receipts until the disclosure in the discovery procedure of this action. The waiver was obtained fraudulently.

Regarding the remaining unrendered accounts amounting to \$18,462.03 (\$22,462.03 less \$4,000) Bielefeld had reconstructed these from information gathered from CBNI's successors late in 1967, as compared with data from his office in Porto Alegre, and notes and letters in his possession. This reconstruction resulted first in Bielefeld's letter of January 23, 1968 (Exhibit #35) and of March 18, 1969 (Exhibit #45). Both these letters were first ignored by Geuther and then repudiated on the false basis that they belonged to CBNI (Exhibit #44 and 47).

X.) It should not escape one's attention that even to this day defendants in their argumentation wish this Court to believe that CBNI was a viable company that had actively transacted business and that Bielefeld's responsibility as agent was toward CBNI as principals of the liner service, and that CBNI alone was responsible for the liquidation of all financial matters. In contradiction to this defendants also tell this Court that Bielefeld could have suspected all along that Wallenius was the real principal and that he could have sued earlier. Thus they are juggling the responsibility as it suits their convenience. And, of course, they do not wish to pay nor do they want a lawsuit. They are still perpetuating the fraud. They are still concealing the "missing documents", the money, whether Geuther received the alleged payments from Wallenius, and why they have not paid Bielefeld. Additional discovery is needed.

XI.) Contrary to what defendants claim, there was not ever any "dispute" over the amounts contained in those disbursement and commission accounts rendered by Bielefeld. The amounts had resulted in Geuther's final statement showing a balance of \$891.21 which Geuther settled in 1971. There was no dispute then, nor

is there now in this connection which would be carried over into the present action. What is being litigated presently are the unrendered accounts which had been subtracted from Bielefeld's offices plus the falsely claimed receipts covering the \$4000 cash to master. These unrendered vanished accounts do not show in Bielefeld's books nor has their receipt ever been acknowledged by Geuther, CBNI or Wallenius, prior to Wallenius' letter of May 10, 1973 (Exhibit #66). Since Wallenius stated in said letter that they had paid all the missing invoices to Geuther in full, this shows there has been no "dispute" over the accounts or their amounts. Where then is the "dispute" the defendants so much talk about? It follows that the contracts can no longer be invoked as they are fully superseded by the disclosure in Wallenius' letter of May 10, 1973.

XII.) How can one believe the defendants when they say:

(Quote from Defendant's Motion to Dismiss, page 3):

"Geuther did not check or audit or inspect any of the CBNI books."

and (Quote from Brief of Appellees, page 8):

Geuther spent considerable time in Brazil in 1963 balancing accounts between CBNI and Bielefeld, and Bielefeld was informed of the status of those accounts (defendants' Exhibit # Q- 47a).

Geuther periodically checked CBNI's books in order to incorporate them in his own and in Wallenius' books. Furthermore, the CBNI books do not contain any of the

VI

"missing accounts" claimed hereunder. Therefore, the CBNI books are totally irrelevant in this action. Also it may be said that the CBNI accounts were not intended to be real workable accounts, but were made up solely for the purpose of satisfying the franchise requirements. Therefore the CBNI accounting does not reflect a correct or complete accounting that could be used for any practical purposes.

XIII.) Appellant Bielefeld has never "admitted (word used by defendants in Appellees' Brief, page 23) that the missing accounts had become outstanding over 12 years prior to the commencement of this action". Bielefeld has, however, declared that certain "missing accounts and vouchers" - the subject of this action - had been taken improperly from his offices and then disappeared before they could be recorded in Bielefeld's books - until they finally emerged in Stockholm on May 10, 1973. In the interim Bielefeld was deprived of these missing invoices and vouchers, did not know where they were and whom to single out as the party who had to pay them. (Exhibits #24; 25; 25; 36; 37; 38; 39; 40; 42; 44; 45). Geuther said these "alleged" invoices belonged to CBNI. CBNI declared they were of Wallenius' responsibility (Exhibit #38), and Wallenius referred Bielefeld to Geuther (Exhibit #41; 43; 61; 66).

Geuther's letter of October 26, 1962 (Exhibit #12 - Defendants' Exhibit #Y-78a), shows the relationship that existed between Geuther and Bielefeld before the agency was terminated. All accounts were to be presented to Geuther (not to CBNI). But as soon as the agency was terminated Geuther deceitfully proclaimed CBNI's responsibility (Exhibits #28; 30; 32; 33; 34; 47; 48; 50). Bielefeld was induced to approach CBNI for liquidation of the missing invoices (Exhibits #35; 37; 38; 39) but nobody was ever there to respond. Geuther then declared - as far as the liner service was concerned - he was agent for CBNI and not for Wallenius (Exhibit #47, 48) and he still tries to defend this false position. (See Discovery procedure/Geuther Q & A #2; 3; 4; 5; 6; 8; 11; 12; 13; 14; 19; 24; 28; 29; 34; 36; 37; 38). Bielefeld exhaustively pursued all leads falsely indicated by the defendants. Defendants had misled Bielefeld into believing that he should seek his accounts and money in Brazil (Exhibits #48; 50; 52; 61; 69).

VII

XIV.) Contrary to defendants' contention, until May 1973 Bielefeld did not know against whom he could direct his claim for payment. Geuther had denied any knowledge of the missing accounts. Wallenius had upheld Geuther's denial. They both declared themselves not competent to deal with this matter and referred Bielefeld to CBNI. The concealment of the missing invoices and vouchers and the repeated declarations kept Bielefeld from a more timely action. Without having the respective invoices and vouchers in hand or at least the knowledge of their whereabouts, nothing could have been gained from suing Wallenius, Geuther or CBNI; for all three had denied any responsibility and Bielefeld had no means to prove a valid claim.

In their Brief for Appellees, page 27, the defendants deduced that Bielefeld had been fully aware of the

"alleged outstanding accounts prior to the so-called revelation of fraud in Wallenius' letter of May 10, 1973. How else could he have listed the disbursement and commission accounts, the dates thereof and the purported amounts due in his letter of March 18, 1969, six years prior to the commencement of this action."

This deduction is misleading. When Bielefeld received a statement of accounts

from the now holders of the CBNI franchise by the end of 1967, he compared this statement with summaries he had from his office in Porto Alegre as well as with letters and notes in his possession and thereby established that certain advanced monies and commissions had not been accounted for other than by mention of dates, references and amounts (no cover sheets and no vouchers). None of them - contrary to Geuthers' declarations - appeared in the CBNI statement. The data thus obtained was then listed in Bielefeld's registered letter to Geuther of January 23, 1968 (Exhibit #35) which Geuther did not answer. Bielefeld re-listed the data in his letter of March 18, 1969 (Exhibit #45) in answer to Geuther's belated letter of March 12, 1969 (Exhibit #44). Again Geuther replied negatively (Exhibit #47) as per his letter of May 6, 1969 which reads:

"We confirm receipt of your letter of April 20th, dealing with allegedly still unsettled accounting matters between your goodselfes and Messrs. CBNI, Rio de Janeiro (emphasis added). Please try to understand that we in our capacity as European Agents only are unable to judge the correctness of your demands towards the Brazilian management, especially under consideration that more than 4 years have passed since the line stopped the service between Europe and Brazil. We furthermore see definitely no possibility to intervene in this matter because we closed out books regarding this service a long time ago."

VIII

With but the scarce information of the missing accounts, no cover-sheets and no vouchers to prove the amounts, and Geuther's aforementioned denials of responsibility, where could Bielefeld have presented his claim? Had he known that Wallenius had recorded these invoices and paid Geuther years before, of course, Bielefeld could have pressed his claim against Wallenius and Geuther. But this is the very disclosure the defendants withheld. On the contrary they deliberately and deceitfully concealed the missing accounts from Bielefeld for the sole purpose of defrauding him of his money. Thus the whole argumentation of defendants is mere bluff. Truly Bielefeld had at various times threatened legal action, offered to accept lumpsum settlement, notified Wallenius that he would hold them accountable, etc.; but all this had no teeth in the face of insufficient evidence to prove his claim. However, Bielefeld hoped this would possibly provoke some break somewhere. Meanwhile defendants false representations and concealment - as is evident from the copious exhibits - kept Bielefeld from bringing a timely action. Only fraud is left.

XV.) Is it harassment when one seeks just payment? Is it harassment to pursue discovery? Is this an inconvenient forum when the plaintiff resides in New York, the defendants do business regularly in New York, and both the plaintiff and the defendants have been transacting business in New York? Is this an inconvenient forum when plaintiff has no other choice of forum? (See Brief on Appeal, page 2).

Indeed defendants are making every effort to have this case thrown out of court and block any possibility of ever having it brought to trial anywhere else. They are glibly suggesting fora in Germany and Brazil when they full well know the case is time-barred and they will not waive the statute of limitations. Like so much else, on one hand they are asking for dismissal of the action and on the other they have already agreed to submit to this Court (Exhibit #F - attached to Appellant's Brief on Appeal).

This Court is plaintiff's last resort. A dismissal is tantamount to no justice. The fact that the defendants are powerful with unlimited resources for a defense and so far have been successful in evading the consequences of deceit and fraud, could become a mockery of sincere business people.

IX

CONCLUSION

The plaintiff has given evidence that the sum of \$22,462.03 is owed and has not been paid by the defendants.

The plaintiff has given evidence that neither the missing invoices nor their amounts have ever been or now are in "dispute". The underlying transactions are, therefor, not in "dispute" either.


The defendants have fraudulently withheld vital information from the plaintiff regarding the whereabouts of his "missing accounts and vouchers" without which the plaintiff was deprived of asserting his rights to cause of action.

The fraud was revealed in Wallenius' letter of May 10, 1973, and in the discovery procedure of this action.

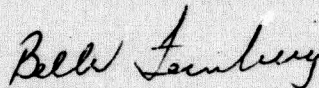
Plaintiff's choice of forum is appropriate.

Wherefore the plaintiff-appellant respectfully petitions this Court of Appeals to review the order of the District Court, to reinstate the original complaint, and to allow further discovery.

New York, N.Y., November 22, 1976.


Plaintiff-Appellant - PRO-SE

Gunter E. Bielefeld
c/o U.S.A. Steamship Agency, Inc.
111 Broadway, Suite 815
New York, N.Y. 10006



Sworn to before me this

22 day of November, 1976

BELLA FEINBERG
NOTARY PUBLIC, State of New York
No. 24-6254575
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1978

MOORE-Mc CORMACK (NAVEGAÇÃO) S. A.

Endereço Telegrafico Geral "MOOREMACK"

SANTOS
CAIXA POSTAL 265

RIO DE JANEIRO
CAIXA POSTAL 1360

SÃO PAULO
CAIXA POSTAL 202

BAHIA
CAIXA POSTAL 659

São Paulo, February 10, 1942

TO WHOM IT MAY CONCERN

This is to certify that Mr. G.E. Bielefeld was an employee of this Company from November 1938 to January 1942.

We have pleasure in stating that he is a thoroughly reliable man, honest and steady. His character is all that we could desire.

We are sorry that by reason of his ambition he did not wait to realize his possibilities of promotion in our own Company and we feel sure that anybody who takes this young man into their employ will never regret it.

MOORE-McCORMACK (NAVEGAÇÃO) S/A.

Edwin Lange Larsson
EDWIN LANGE LARSSON
Manager

AMERICAN UNION TRANSPORT, INC.

BROKERS FOR THE CHARTERING, PURCHASE AND SALE OF SHIPS



CABLE ADDRESS
"TRANSUNION"
ALL CABLES USED

BOWLING GREEN 4-5701

TELETYPE 441-2511

GENERAL OFFICES 17 BATTERY PLACE • NEW YORK 4, N.Y.

February 27, 1953

Brasilian Consulate General
10 Rockefeller Plaza
New York, N.Y.

Gentlemen:

Mr. Gunter E. Bielefeld has been employed by this company since April 1952 in our Ship Chartering Department. We now wish him to open an office in Sao Paulo to represent us and have already made reservation for him and his wife on the M.V. "PARAMAGUA", scheduled to sail from New York on March 9th.

Mr. Bielefeld had previously resided in Brazil, i.e. from 1936-1947 and his past residence may be verified from his Carteira de Permanencia #19. Since 1947 he has travelled extensively throughout the United States and the Far East on behalf of American Shipping interests.

May this information aid in the prompt issuance of permanent visas for him and his wife in time to make aforementioned sailing.

Very truly yours,

AMERICAN UNION TRANSPORT, INC.

G. HIRSCHFELD

Vice-President



ISBRANDTSEN COMPANY, Inc.



CABLE ADDRESS ISBRANDTSEN
TELEPHONE WHITMAN 1-2-2800

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MEDITERRANEAN, SUEZ, RED SEA, PERSIAN GULF, ARABIAN SEA, INDIAN OCEAN, SINGAPORE, MALAY STRAITS, SINGAPORE, S. E. ASIA, PHILIPPINES, HONGKONG, FORMOSA, SOKO, JAPAN, U.S. WEST COAST, PUERTO RICO, U.S. EAST COAST

Merchants and Shipowners

26 BROADWAY NEW YORK 4, N.Y.

AMERICAN STEAMERS

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11:00 P.M.

Flying Cloud
11:00 P.M.

Flying Eagle
11:00 P.M.

Flying Endeavor
11:00 P.M.

Flying Enterprise II
11:00 P.M.

Flying Fish
11:00 P.M.

Flying Gull
11:00 P.M.

Flying Hawk
11:00 P.M.

Flying Independent
11:00 P.M.

Flying Spray
11:00 P.M.

Flying Trader
11:00 P.M.

Spanish Heights
11:00 P.M.

Ransom Heights
11:00 P.M.

St. John Franklin
11:00 P.M.

St. John Franklin
11:00 P.M.

TO WHOM IT MAY CONCERN:

Please be advised that Gunter Erich Leopold Bielefeld has been associated with and working in behalf of this firm and its subsidiaries in Sao Paulo for a number of years.

It is our understanding that, in order for Mr. Bielefeld to preserve his American citizenship he is required to return to the United States every five years for at least six months. There can be no question that Mr. Bielefeld's separation for that period of time from his business activities in Sao Paulo will work a hardship on him but it could materially affect our interests there.

We urgently request that this requirement be waived in this instance.

Yours very truly,

ISBRANDTSEN COMPANY, INC.

W. M. Isbrandtsen
W. M. Isbrandtsen
Vice President

WMI/nm

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